

115TH CONGRESS
1ST SESSION

H. R. 4702

To provide accountability and protect whistleblowers in the Department of
Education.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2017

Mr. FRANCIS ROONEY of Florida (for himself and Mr. SMUCKER) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide accountability and protect whistleblowers in the
Department of Education.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Edu-
5 cation Accountability and Whistleblower Protection Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) The term “Department” means the Depart-
2 ment of Education.

3 (2) The term “Deputy Secretary” means the
4 Deputy Secretary of Education.

5 (3) The term “Office” means the Office of
6 Management of the Department of Education.

7 (4) The term “Secretary” means the Secretary
8 of Education.

9 (5) The term “senior executive position at the
10 Department” means an individual appointed under
11 section 401(d) of the Department of Education Or-
12 ganization Act (20 U.S.C. 3461).

13 (6) The term “supervisory employee” means an
14 employee of the Department who is a supervisor as
15 defined in section 7103(a) of title 5.

16 (7) The term “whistleblower” means one who
17 makes a whistleblower disclosure.

18 (8) The term “whistleblower disclosure” means
19 any disclosure of information by an employee of the
20 Department or individual applying to become an em-
21 ployee of the Department which the employee or in-
22 dividual reasonably believes evidences—

23 (A) a violation of a law, rule, or regulation;
24 or

1 (B) gross mismanagement, a gross waste
2 of funds, an abuse of authority, or a substantial
3 and specific danger to public health or safety.

4 **SEC. 3. OFFICE OF MANAGEMENT.**

5 (a) FUNCTIONS.—(1) In addition to any other func-
6 tions, the functions of the Office are as follows:

7 (A) Advising the Secretary on all matters of the
8 Department relating to accountability, including ac-
9 countability of employees of the Department, retalia-
10 tion against whistleblowers, and such matters as the
11 Secretary considers similar and affect public trust at
12 the Department.

13 (B) Issuing reports and providing recommenda-
14 tions related to the duties described in subparagraph
15 (A).

16 (C) Receiving whistleblower disclosures.

17 (D) Referring whistleblower disclosures received
18 under subparagraph (C) for investigation to the Of-
19 fice of Inspector General, or other investigative enti-
20 ty, as appropriate, if the Deputy Secretary has rea-
21 son to believe the whistleblower disclosure is evi-
22 dence of a violation of a provision of law, mis-
23 management, gross waste of funds, or an abuse of
24 authority.

1 (E) Receiving and referring disclosures from
2 the Special Counsel for the Inspector General of the
3 Department, or such other person with investigatory
4 authority, as the Deputy Secretary considers appropriate.
5

6 (F) Recording, tracking, reviewing, and confirming
7 implementation of recommendations from
8 audits and investigations carried out by the Inspector
9 General of the Department, the Special Counsel,
10 and the Comptroller General of the United States,
11 including the imposition of disciplinary actions and
12 other corrective actions contained in such recommendations.
13

14 (G) Analyzing data from the Office and the Office
15 of Inspector General telephone hotlines, other
16 whistleblower disclosures, disaggregated by facility
17 and area of health care if appropriate, and relevant
18 audits and investigations to identify trends and issue
19 reports to the Secretary based on analysis conducted
20 under this subparagraph.

21 (H) Receiving, reviewing, and investigating allegations
22 of misconduct, retaliation, or poor performance involving—
23

24 (i) an individual in a senior executive position
25 at the Department;

1 (ii) an individual employed in a confiden-
2 tial, policy-making, policy-determining, or pol-
3 icy-advocating position at the Department; or

4 (iii) a supervisory employee, if the allega-
5 tion involves retaliation against an employee for
6 making a whistleblower disclosure.

7 (I) Making such recommendations to the Sec-
8 retary for disciplinary action as the Deputy Sec-
9 retary considers appropriate after substantiating any
10 allegation of misconduct or poor performance pursu-
11 ant to an investigation carried out as described in
12 subparagraph (F) or (H).

13 (2) In carrying out the functions of the Office, the
14 Deputy Secretary shall ensure that the Office maintains
15 a toll-free telephone number and Internet website to re-
16 ceive anonymous whistleblower disclosures.

17 (3) In any case in which the Deputy Secretary re-
18 ceives a whistleblower disclosure from an employee of the
19 Department under paragraph (1)(C), the Deputy Sec-
20 retary may not disclose the identity of the employee with-
21 out the consent of the employee, except in accordance with
22 the provisions of section 552a of title 5, or as required
23 by any other applicable provision of Federal law.

24 (b) STAFF AND RESOURCES.—The Secretary shall
25 ensure that the Deputy Secretary has such staff, re-

1 sources, and access to information as may be necessary
2 to carry out the functions of the Office.

3 (c) RELATION TO OFFICE OF GENERAL COUNSEL.—

4 The Office shall not be an element of the Office of the
5 General Counsel and the Deputy Secretary may not report
6 to the General Counsel.

7 (d) REPORTS.—(1)(A) Not later than June 30 of
8 each calendar year, beginning with June 30, 2017, the
9 Deputy Secretary shall submit to the Committee on
10 Health, Education, Labor, and Pensions of the Senate and
11 the Committee on Education and the Workforce of the
12 House of Representatives a report on the activities of the
13 Office during the calendar year in which the report is sub-
14 mitted.

15 (B) Each report submitted under subparagraph (A)
16 shall include, for the period covered by the report, the fol-
17 lowing:

18 (i) A full and substantive analysis of the activi-
19 ties of the Office, including such statistical informa-
20 tion as the Deputy Secretary considers appropriate.

21 (ii) Identification of any issues reported to the
22 Secretary under subsection (b)(1)(G), including such
23 data as the Deputy Secretary considers relevant to
24 such issues and any trends the Deputy Secretary
25 may have identified with respect to such issues.

1 (iii) Identification of such concerns as the Dep-
2 uty Secretary may have regarding the size, staffing,
3 and resources of the Office and such recommenda-
4 tions as the Deputy Secretary may have for legisla-
5 tive or administrative action to address such con-
6 cerns.

7 (iv) Such recommendations as the Deputy Sec-
8 retary may have for legislative or administrative ac-
9 tion to improve—

10 (I) the process by which concerns are re-
11 ported to the Office; and

12 (II) the protection of whistleblowers within
13 the Department.

14 (v) Such other matters as the Deputy Secretary
15 considers appropriate regarding the functions of the
16 Office or other matters relating to the Office.

17 (2) If the Secretary receives a recommendation for
18 disciplinary action under subsection (b)(1)(I) and does not
19 take or initiate the recommended disciplinary action before
20 the date that is 60 days after the date on which the Sec-
21 retary received the recommendation, the Secretary shall
22 submit to the Committee on Health, Education, Labor,
23 and Pensions of the Senate and the Committee on Edu-
24 cation and the Workforce of the House of Representatives

1 a detailed justification for not taking or initiating such
2 disciplinary action.

3 **SEC. 4. PROTECTION OF WHISTLEBLOWERS AS CRITERIA**
4 **IN EVALUATION OF SUPERVISORS.**

5 (a) DEVELOPMENT AND USE OF CRITERIA RE-
6 QUIRED.—The Secretary, in consultation with the Office
7 of the Principal Deputy Secretary, shall develop criteria
8 that—

9 (1) the Secretary shall use as a critical element
10 in any evaluation of the performance of a super-
11 visory employee; and

12 (2) promotes the protection of whistleblowers.

13 (b) PRINCIPLES FOR PROTECTION OF WHISTLE-
14 BLOWERS.—The criteria required by subsection (a) shall
15 include principles for the protection of whistleblowers,
16 such as the degree to which supervisory employees respond
17 constructively when employees of the Department report
18 concerns, take responsible action to resolve such concerns,
19 and foster an environment in which employees of the De-
20 partment feel comfortable reporting concerns to super-
21 visory employees or to the appropriate authorities.

22 **SEC. 5. TRAINING REGARDING WHISTLEBLOWER DISCLO-**
23 **SURES.**

24 (a) TRAINING.—Not less frequently than once every
25 two years, the Secretary, in coordination with the Whistle-

1 blower Protection Ombudsman designated under section
2 3(d)(1)(C) of the Inspector General Act of 1978 (5 U.S.C.
3 App.), shall provide to each employee of the Department
4 training regarding whistleblower disclosures, including—

5 (1) an explanation of each method established
6 by law in which an employee may file a whistle-
7 blower disclosure;

8 (2) the right of the employee to petition Con-
9 gress regarding a whistleblower disclosure in accord-
10 ance with section 7211 of title 5;

11 (3) an explanation that the employee may not
12 be prosecuted or reprised against for disclosing in-
13 formation to Congress, the Inspector General, or an-
14 other investigatory agency in instances where such
15 disclosure is permitted by law, including under sec-
16 tions 5701, 5705, and 7732 of this title, under sec-
17 tion 552a of title 5 (commonly referred to as the
18 Privacy Act);

19 (4) an explanation of the language that is re-
20 quired to be included in all nondisclosure policies,
21 forms, and agreements pursuant to section
22 115(a)(1) of the Whistleblower Protection Enhance-
23 ment Act of 2012 (5 U.S.C. 2302 note); and

1 (5) the right of contractors to be protected from
2 reprisal for the disclosure of certain information
3 under section 4705 or 4712 of title 41.

4 (b) MANNER TRAINING IS PROVIDED.—The Sec-
5 retary shall ensure, to the maximum extent practicable,
6 that training provided under subsection (a) is provided in
7 person.

8 (c) CERTIFICATION.—Not less frequently than once
9 every two years, the Secretary shall provide training on
10 merit system protection in a manner that the Special
11 Counsel certifies as being satisfactory.

12 (d) PUBLICATION.—The Secretary shall publish on
13 the Internet website of the Department, and display
14 prominently at each facility of the Department, the rights
15 of an employee to make a whistleblower disclosure, includ-
16 ing the information described in paragraphs (1) through
17 (5) of subsection (a).

18 **SEC. 6. SENIOR EXECUTIVES: REMOVAL, DEMOTION, OR**
19 **SUSPENSION BASED ON PERFORMANCE OR**
20 **MISCONDUCT.**

21 (a) AUTHORITY.—(1) The Secretary of Education, in
22 consultation with the Office of Management, may, as pro-
23 vided in this section, reprimand or suspend, involuntarily
24 reassign, demote, or remove a covered individual from a
25 senior executive position at the Department if the Sec-

1 retary determines that the misconduct or performance of
2 the covered individual warrants such action.

3 (2) If the Secretary so removes such an individual,
4 the Secretary may remove the individual from the civil
5 service (as defined in section 2101 of title 5, United States
6 Code).

7 (b) RIGHTS AND PROCEDURES.—(1) A covered indi-
8 vidual who is the subject of an action under subsection
9 (a) is entitled to—

10 (A) advance notice of the action and a file con-
11 taining all evidence in support of the proposed ac-
12 tion;

13 (B) be represented by an attorney or other rep-
14 resentative of the covered individual's choice; and

15 (C) grieve the action in accordance with an in-
16 ternal grievance process that the Secretary, in con-
17 sultation with the Office of Management, shall es-
18 tablish for purposes of this subsection.

19 (2)(A) The aggregate period for notice, response, and
20 decision on an action under subsection (a) may not exceed
21 15 business days.

22 (B) The period for the response of a covered indi-
23 vidual to a notice under paragraph (1)(A) of an action
24 under subsection (a) shall be 7 business days.

1 (C) A decision under this paragraph on an action
2 under subsection (a) shall be issued not later than 15 busi-
3 ness days after notice of the action is provided to the cov-
4 ered individual under paragraph (1)(A). The decision shall
5 be in writing, and shall include the specific reasons there-
6 for.

7 (3) The Secretary shall ensure that the grievance
8 process established under paragraph (1)(C) takes fewer
9 than 21 days.

10 (4) A decision under paragraph (2) that is not
11 grieved, and a grievance decision under paragraph (3),
12 shall be final and conclusive.

13 (5) A covered individual adversely affected by a deci-
14 sion under paragraph (2) that is not grieved, or by a griev-
15 ance decision under paragraph (3), may obtain judicial re-
16 view of such decision.

17 (6) In any case in which judicial review is sought
18 under paragraph (5), the court shall review the record and
19 may set aside any Department action found to be—

20 (A) arbitrary, capricious, an abuse of discretion,
21 or otherwise not in accordance with a provision of
22 law;

23 (B) obtained without procedures required by a
24 provision of law having been followed; or

25 (C) unsupported by substantial evidence.

1 (c) RELATION TO OTHER PROVISIONS OF LAW.—
 2 Section 3592(b)(1) of title 5, United States Code, and the
 3 procedures under section 7543(b) of such title do not
 4 apply to an action under subsection (a).

5 (d) DEFINITIONS.—In this section:

6 (1) The term “covered individual” means—

7 (A) a career appointee (as that term is de-
 8 fined in section 3132(a)(4) of title 5, United
 9 States Code); or

10 (B) any individual who occupies an admin-
 11 istrative or executive position and who was ap-
 12 pointed under title II of the Department of
 13 Education Organization Act (20 U.S.C. 3411 et
 14 seq.).

15 (2) The term “misconduct” includes neglect of
 16 duty, malfeasance, or failure to accept a directed re-
 17 assignment or to accompany a position in a transfer
 18 of function.

19 **SEC. 7. EMPLOYEES: REMOVAL, DEMOTION, OR SUSPEN-**
 20 **SION BASED ON PERFORMANCE OR MIS-**
 21 **CONDUCT.**

22 (a) IN GENERAL.—(1) The Secretary, in consultation
 23 with the Office of Management, may remove, demote, or
 24 suspend a covered individual who is an employee of the
 25 Department if the Secretary determines the performance

1 or misconduct of the covered individual warrants such re-
2 moval, demotion, or suspension.

3 (2) If the Secretary so removes, demotes, or suspends
4 such a covered individual, the Secretary may—

5 (A) remove the covered individual from the civil
6 service (as defined in section 2101 of title 5, United
7 States Code);

8 (B) demote the covered individual by means of
9 a reduction in grade for which the covered individual
10 is qualified, that the Secretary determines is appro-
11 priate, and that reduces the annual rate of pay of
12 the covered individual; or

13 (C) suspend the covered individual.

14 (b) PAY OF CERTAIN DEMOTED INDIVIDUALS.—(1)
15 Notwithstanding any other provision of law, any covered
16 individual subject to a demotion under subsection (a)(2)
17 shall, beginning on the date of such demotion, receive the
18 annual rate of pay applicable to such grade.

19 (2)(A) A covered individual so demoted may not be
20 placed on administrative leave during the period during
21 which an appeal (if any) under this section is ongoing,
22 and may only receive pay if the covered individual reports
23 for duty or is approved to use accrued unused annual,
24 sick, family medical, military, or court leave.

1 (B) If a covered individual so demoted does not re-
2 port for duty or receive approval to use accrued unused
3 leave, such covered individual shall not receive pay or
4 other benefits pursuant to subsection (d)(5).

5 (c) PROCEDURE.—(1)(A) The aggregate period for
6 notice, response, and final decision in a removal, demotion,
7 or suspension under this section may not exceed 15 busi-
8 ness days.

9 (B) The period for the response of a covered indi-
10 vidual to a notice of a proposed removal, demotion, or sus-
11 pension under this section shall be 7 business days.

12 (C) Paragraph (3) of subsection (b) of section 7513
13 of title 5, United States Code, shall apply with respect
14 to a removal, demotion, or suspension under this section.

15 (D) The procedures in this subsection shall supersede
16 any collective bargaining agreement to the extent that
17 such agreement is inconsistent with such procedures.

18 (2) The Secretary shall issue a final decision with re-
19 spect to a removal, demotion, or suspension under this sec-
20 tion not later than 15 business days after the Secretary
21 provides notice, including a file containing all the evidence
22 in support of the proposed action, to the covered individual
23 of the removal, demotion, or suspension. The decision shall
24 be in writing and shall include the specific reasons there-
25 for.

1 (3) The procedures under chapter 43 of title 5,
2 United States Code, shall not apply to a removal, demo-
3 tion, or suspension under this section.

4 (4)(A) Subject to subparagraph (B) and subsection
5 (d), any removal or demotion under this section, and any
6 suspension of more than 14 days under this section, may
7 be appealed to the Merit Systems Protection Board, which
8 shall refer such appeal to an administrative judge pursu-
9 ant to section 7701(b)(1) of title 5, United States Code.

10 (B) An appeal under subparagraph (A) of a removal,
11 demotion, or suspension may only be made if such appeal
12 is made not later than 10 business days after the date
13 of such removal, demotion, or suspension.

14 (d) EXPEDITED REVIEW.—(1) Upon receipt of an ap-
15 peal under subsection (c)(4)(A), the administrative judge
16 shall expedite any such appeal under section 7701(b)(1)
17 of title 5, United States Code, and, in any such case, shall
18 issue a final and complete decision not later than 180 days
19 after the date of the appeal.

20 (2)(A) Notwithstanding section 7701(c)(1)(B) of title
21 5, the administrative judge shall uphold the decision of
22 the Secretary to remove, demote, or suspend an employee
23 under subsection (a) if the decision is supported by sub-
24 stantial evidence.

1 (B) Notwithstanding title 5, United States Code, or
2 any other provision of law, if the decision of the Secretary
3 is supported by substantial evidence, the administrative
4 judge shall not mitigate the penalty prescribed by the Sec-
5 retary.

6 (3)(A) The decision of the administrative judge under
7 paragraph (1) may be appealed to the Merit Systems Pro-
8 tection Board.

9 (B) Notwithstanding section 7701(c)(1)(B) of title 5,
10 United States Code, the Merit Systems Protection Board
11 shall uphold the decision of the Secretary to remove, de-
12 mote, or suspend an employee under subsection (a) if the
13 decision is supported by substantial evidence.

14 (C) Notwithstanding title 5 or any other provision of
15 law, if the decision of the Secretary is supported by sub-
16 stantial evidence, the Merit Systems Protection Board
17 shall not mitigate the penalty prescribed by the Secretary.

18 (4) In any case in which the administrative judge
19 cannot issue a decision in accordance with the 180-day
20 requirement under paragraph (1), the Merit Systems Pro-
21 tection Board shall, not later than 14 business days after
22 the expiration of the 180-day period, submit to the Com-
23 mittee on Health, Education, Labor, and Pensions of the
24 Senate and the Committee on Education and the Work-
25 force of the House of Representatives a report that ex-

1 plains the reasons why a decision was not issued in accord-
2 ance with such requirement.

3 (5) A decision of the Merit Systems Protection Board
4 under paragraph (3) may be appealed to the United States
5 Court of Appeals for the Federal Circuit pursuant to sec-
6 tion 7703 of title 5, United States Code, or to any court
7 of appeals of competent jurisdiction pursuant to sub-
8 section (b)(1)(B) of such section.

9 (6) The Merit Systems Protection Board may not
10 stay any removal or demotion under this section, except
11 as provided in section 1214(b) of title 5, United States
12 Code.

13 (7) During the period beginning on the date on which
14 a covered individual appeals a removal from the civil serv-
15 ice under subsection (c) and ending on the date that the
16 United States Court of Appeals for the Federal Circuit
17 issues a final decision on such appeal, such covered indi-
18 vidual may not receive any pay, awards, bonuses, incen-
19 tives, allowances, differentials, student loan repayments,
20 special payments, or benefits related to the employment
21 of the individual by the Department.

22 (8) To the maximum extent practicable, the Secretary
23 shall provide to the Merit Systems Protection Board such
24 information and assistance as may be necessary to ensure
25 an appeal under this subsection is expedited.

1 (9) If an employee prevails on appeal under this sec-
2 tion, the employee shall be entitled to backpay (as pro-
3 vided in section 5596 of title 5, United States Code).

4 (10) If an employee who is subject to a collective bar-
5 gaining agreement chooses to grieve an action taken under
6 this section through a grievance procedure provided under
7 the collective bargaining agreement, the timelines and pro-
8 cedures set forth in subsection (c) and this subsection
9 shall apply.

10 (e) WHISTLEBLOWER PROTECTION.—(1) In the case
11 of a covered individual seeking corrective action (or on be-
12 half of whom corrective action is sought) from the Office
13 of Special Counsel based on an alleged prohibited per-
14 sonnel practice described in section 2302(b) of title 5,
15 United States Code, the Secretary may not remove, de-
16 mote, or suspend such covered individual under subsection
17 (a) without the approval of the Special Counsel under sec-
18 tion 1214(f) of such title.

19 (2) In the case of a covered individual who has made
20 a whistleblower disclosure to the Office of Management
21 of the Department of Education, the Secretary may not
22 remove, demote, or suspend such covered individual under
23 subsection (a) until—

24 (A) in the case in which the Deputy Secretary
25 determines to refer the whistleblower disclosure

1 under section 3(a)(1)(D) to an office or other inves-
2 tigative entity, a final decision with respect to the
3 whistleblower disclosure has been made by such of-
4 fice or other investigative entity; or

5 (B) in the case in which the Deputy Secretary
6 determines not to refer the whistleblower disclo-
7 sure under such section, the Assistant Secretary
8 makes such determination.

9 (f) TERMINATION OF INVESTIGATIONS BY OFFICE OF
10 SPECIAL COUNSEL.—(1) Notwithstanding any other pro-
11 vision of law, the Special Counsel (established by section
12 1211 of title 5, United States Code) may terminate an
13 investigation of a prohibited personnel practice alleged by
14 an employee or former employee of the Department after
15 the Special Counsel provides to the employee or former
16 employee a written statement of the reasons for the termi-
17 nation of the investigation.

18 (2) Such statement may not be admissible as evidence
19 in any judicial or administrative proceeding without the
20 consent of such employee or former employee.

21 (g) VACANCIES.—In the case of a covered individual
22 who is removed or demoted under subsection (a), to the
23 maximum extent feasible, the Secretary shall fill the va-
24 cancy arising as a result of such removal or demotion.

25 (h) DEFINITIONS.—In this section:

1 (1) The term “covered individual” means an in-
2 dividual occupying a position at the Department, but
3 does not include—

4 (A) an individual occupying a senior execu-
5 tive position at the Department;

6 (B) an individual appointed under title II
7 of the Department of Education Organization
8 Act (20 U.S.C. 3411 et seq.);

9 (C) an individual who has not completed a
10 probationary or trial period; or

11 (D) a political appointee.

12 (2) The term “suspend” means the placing of
13 an employee, for disciplinary reasons, in a temporary
14 status without duties and pay for a period in excess
15 of 14 days.

16 (3) The term “grade” has the meaning given
17 such term in section 7511(a) of title 5, United
18 States Code.

19 (4) The term “misconduct” includes neglect of
20 duty, malfeasance, or failure to accept a directed re-
21 assignment or to accompany a position in a transfer
22 of function.

23 (5) The term “political appointee” means an in-
24 dividual who is—

1 (A) employed in a position described under
 2 sections 5312 through 5316 of title 5, United
 3 States Code (relating to the Executive Sched-
 4 ule);

5 (B) a limited term appointee, limited emer-
 6 gency appointee, or noncareer appointee in the
 7 Senior Executive Service, as defined under
 8 paragraphs (5), (6), and (7), respectively, of
 9 section 3132(a) of title 5, United States Code;
 10 or

11 (C) employed in a position of a confidential
 12 or policy-determining character under schedule
 13 C of subpart C of part 213 of title 5, Code of
 14 Federal Regulations, or successor regulation.

15 **SEC. 8. REDUCTION OF BENEFITS OF EMPLOYEES CON-**
 16 **VICTED OF CERTAIN CRIMES.**

17 (a) REDUCTION OF ANNUITY FOR REMOVED EM-
 18 PLOYEE.—(1) The Secretary shall order that the covered
 19 service of an employee of the Department removed from
 20 a position for performance or misconduct under any provi-
 21 sion of law shall not be taken into account for purposes
 22 of calculating an annuity with respect to such individual
 23 under chapter 83 or chapter 84 of title 5, United States
 24 Code, if—

1 (A) the Secretary determines that the individual
2 is convicted of a felony (and the conviction is final)
3 that influenced the individual's performance while
4 employed in the position;

5 (B) before such order is made, the individual is
6 afforded—

7 (i) notice of the proposed order; and

8 (ii) an opportunity to respond to the pro-
9 posed order by not later than ten business days
10 following receipt of such notice; and

11 (C) the Secretary issues the order—

12 (i) in the case of a proposed order to which
13 an individual responds under subparagraph
14 (B)(ii), not later than five business days after
15 receiving the response of the individual; or

16 (ii) in the case of a proposed order to
17 which an individual does not respond, not later
18 than 15 business days after the Secretary pro-
19 vides notice to the individual under subpara-
20 graph (B)(i).

21 (2) Any individual with respect to whom an annuity
22 is reduced under this subsection may appeal the reduction
23 to the Director of the Office of Personnel Management
24 pursuant to such regulations as the Director may pre-
25 scribe for purposes of this subsection.

1 (b) REDUCTION OF ANNUITY FOR RETIRED EM-
2 PLOYEE.—(1) The Secretary may order that the covered
3 service of an individual who the Secretary proposes to re-
4 move for performance or misconduct under any provision
5 of law but who leaves employment at the Department prior
6 to the issuance of a final decision with respect to such
7 action shall not be taken into account for purposes of cal-
8 culating an annuity with respect to such individual under
9 chapter 83 or chapter 84 of title 5, United States Code,
10 if—

11 (A) the Secretary determines that individual is
12 convicted of a felony (and the conviction is final)
13 that influenced the individual's performance while
14 employed in the position;

15 (B) before such order is made, the individual is
16 afforded—

17 (i) notice of the proposed order; and

18 (ii) an opportunity to respond to the pro-
19 posed order by not later than ten business days
20 following receipt of such notice; and

21 (C) the Secretary issues the order—

22 (i) in the case of a proposed order to which
23 an individual responds under subparagraph
24 (B)(ii), not later than five business days after
25 receiving the response of the individual; or

1 (ii) in the case of a proposed order to
2 which an individual does not respond, not later
3 than 15 business days after the Secretary pro-
4 vides notice to the individual under subpara-
5 graph (B)(i).

6 (2) Upon the issuance of an order by the Secretary
7 under paragraph (1), the individual shall have an oppor-
8 tunity to appeal the order to the Director of the Office
9 of Personnel Management before the date that is seven
10 business days after the date of such issuance.

11 (3) The Director of the Office of Personnel Manage-
12 ment shall make a final decision with respect to an appeal
13 under paragraph (2) within 30 business days of receiving
14 the appeal.

15 (c) ADMINISTRATIVE REQUIREMENTS.—Not later
16 than 37 business days after the Secretary issues a final
17 order under subsection (a) or (b) with respect to an indi-
18 vidual, the Director of the Office of Personnel Manage-
19 ment shall recalculate the annuity of the individual.

20 (d) LUMP-SUM ANNUITY CREDIT.—Any individual
21 with respect to whom an annuity is reduced under sub-
22 section (a) or (b) shall be entitled to be paid so much of
23 such individual's lump-sum credit as is attributable to the
24 period of covered service.

1 (e) SPOUSE OR CHILDREN EXCEPTION.—(1) The
2 Secretary, in consultation with the Director of the Office
3 of Personnel Management, shall prescribe regulations that
4 may provide for the payment to the spouse or children
5 of any individual referred to in subsection (a) or (b) of
6 any amounts which (but for this subsection) would other-
7 wise have been nonpayable by reason of such subsections.

8 (2) Regulations prescribed under paragraph (1) shall
9 be consistent with the requirements of sections 8332(o)(5)
10 and 8411(l)(5) of title 5, United States Code, as the case
11 may be.

12 (f) DEFINITIONS.—In this section:

13 (1) The term “covered service” means, with re-
14 spect to an individual subject to a removal for per-
15 formance or misconduct under section 4 or any
16 other provision of law, the period of service begin-
17 ning on the date that the Secretary determines
18 under such applicable provision that the individual
19 engaged in activity that gave rise to such action and
20 ending on the date that the individual is removed
21 from or leaves a position of employment at the De-
22 partment prior to the issuance of a final decision
23 with respect to such action.

24 (2) The term “lump-sum credit” has the mean-
25 ing given such term in section 8331(8) or section

1 8401(19) of title 5, United States Code, as the case
2 may be.

3 (3) The term “service” has the meaning given
4 such term in section 8331(12) or section 8401(26)
5 of title 5, United States Code, as the case may be.

6 **SEC. 9. RECOUPMENT OF BONUSES OR AWARDS PAID TO**
7 **EMPLOYEES OF DEPARTMENT.**

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, the Secretary may issue an order directing
10 an employee of the Department to repay the amount, or
11 a portion of the amount, of any award or bonus paid to
12 the employee under title 5, United States Code, including
13 under chapter 45 or 53 of such title, section 141(d)(5)(B)
14 of the Higher Education Act of 1965 (20 U.S.C.
15 1018(d)(5)(B)), or another provision of Federal law, if—

16 (1) the Secretary determines that the individual
17 engaged in misconduct or poor performance prior to
18 payment of the award or bonus, and that such
19 award or bonus would not have been paid, in whole
20 or in part, had the misconduct or poor performance
21 been known prior to payment;

22 (2) before such repayment, the employee is af-
23 forded—

24 (A) notice of the proposed order; and

1 (B) an opportunity to respond to the pro-
2 posed order by not later than 10 business days
3 after the receipt of such notice; and

4 (3) the Secretary issues the order—

5 (A) in the case of a proposed order to
6 which an individual responds under paragraph
7 (2)(B), not later than five business days after
8 receiving the response of the individual; or

9 (B) in the case of a proposed order to
10 which an individual does not respond, not later
11 than 15 business days after the Secretary pro-
12 vides notice to the individual under paragraph
13 (2)(A).

14 (b) APPEAL OF ORDER OF SECRETARY.—(1) Upon
15 the issuance of an order by the Secretary under subsection
16 (a) with respect to an individual, the individual shall have
17 an opportunity to appeal the order to the Director of the
18 Office of Personnel Management before the date that is
19 seven business days after the date of such issuance.

20 (2) The Director shall make a final decision with re-
21 spect to an appeal under paragraph (1) within 30 business
22 days after receiving such appeal.

23 (c) EFFECTIVE DATE.—This section shall apply with
24 respect to an award or bonus paid by the Secretary to

1 an employee of the Department on or after the date of
2 the enactment of this Act.

3 **SEC. 10. ADVERSE ACTIONS AGAINST SUPERVISORY EM-**
4 **PLOYEES WHO COMMIT PROHIBITED PER-**
5 **SONNEL ACTIONS RELATING TO WHISTLE-**
6 **BLOWER COMPLAINTS.**

7 (a) IN GENERAL.—(1) In accordance with paragraph
8 (2), the Secretary shall carry out the following adverse ac-
9 tions against supervisory employees (as defined in section
10 7103(a) of title 5) whom the Secretary, an administrative
11 judge, the Merit Systems Protection Board, the Office of
12 Special Counsel, an adjudicating body provided under a
13 union contract, a Federal judge, or the Inspector General
14 of the Department determines committed a prohibited per-
15 sonnel action described in subsection (c):

16 (A) With respect to the first offense, an adverse
17 action that is not less than a 12-day suspension and
18 not more than removal.

19 (B) With respect to the second offense, re-
20 moval.

21 (2)(A) An employee against whom an adverse action
22 under paragraph (1) is proposed is entitled to written no-
23 tice.

24 (B)(i) An employee who is notified under subpara-
25 graph (A) of being the subject of a proposed adverse ac-

1 tion under paragraph (1) is entitled to 10 days following
2 such notification to answer and furnish evidence in sup-
3 port of the answer.

4 (ii) If the employee does not furnish any such evi-
5 dence as described in clause (i) or if the Secretary deter-
6 mines that such evidence is not sufficient to reverse the
7 determination to propose the adverse action, the Secretary
8 shall carry out the adverse action following such 10-day
9 period.

10 (C) Paragraphs (1) and (2) of subsection (b) of sec-
11 tion 7513 of title 5, subsection (c) of such section, para-
12 graphs (1) and (2) of subsection (b) of section 7543 of
13 such title, and subsection (c) of such section shall not
14 apply with respect to an adverse action carried out under
15 paragraph (1).

16 (b) LIMITATION ON OTHER ADVERSE ACTIONS.—
17 With respect to a prohibited personnel action described in
18 subsection (c), if the Secretary carries out an adverse ac-
19 tion against a supervisory employee, the Secretary may
20 carry out an additional adverse action under this section
21 based on the same prohibited personnel action if the total
22 severity of the adverse actions do not exceed the level spec-
23 ified in subsection (a).

1 (c) PROHIBITED PERSONNEL ACTION DESCRIBED.—

2 A prohibited personnel action described in this subsection
3 is any of the following actions:

4 (1) Taking or failing to take a personnel action
5 in violation of section 2302 of title 5 against an em-
6 ployee relating to the employee—

7 (A) making a whistleblower disclosure to
8 the Assistant Secretary for Accountability and
9 Whistleblower Protection, the Inspector General
10 of the Department, the Special Counsel, or
11 Congress;

12 (B) providing information or participating
13 as a witness in an investigation of a whistle-
14 blower disclosure made to the Assistant Sec-
15 retary for Accountability and Whistleblower
16 Protection, the Inspector General of the De-
17 partment, the Special Counsel, or Congress;

18 (C) participating in an audit or investiga-
19 tion by the Comptroller General of the United
20 States;

21 (D) refusing to perform an action that is
22 unlawful or prohibited by the Department; or

23 (E) engaging in communications that are
24 related to the duties of the position or are oth-
25 erwise protected.

1 (2) Preventing or restricting an employee from
2 making an action described in any of subparagraphs
3 (A) through (E) of paragraph (1).

4 (3) Conducting a negative peer review or open-
5 ing a retaliatory investigation because of an activity
6 of an employee that is protected by section 2302 of
7 title 5.

8 (4) Requesting a contractor to carry out an ac-
9 tion that is prohibited by section 4705(b) or section
10 4712(a)(1) of title 41, as the case may be.

11 **SEC. 11. RECOUPMENT OF RELOCATION EXPENSES PAID**
12 **ON BEHALF OF EMPLOYEES OF DEPART-**
13 **MENT.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, the Secretary may issue an order directing
16 an employee of the Department to repay the amount, or
17 a portion of the amount, paid to or on behalf of the em-
18 ployee under title 5, United States Code, for relocation
19 expenses, including any expenses under section 5724 or
20 5724a of such title, if—

21 (1) the Secretary determines that relocation ex-
22 penses were paid following an act of fraud or mal-
23 feasance that influenced the authorization of the re-
24 location expenses;

1 (2) before such repayment, the employee is af-
2 fording—

3 (A) notice of the proposed order; and

4 (B) an opportunity to respond to the pro-
5 posed order not later than ten business days
6 following the receipt of such notice; and

7 (3) the Secretary issues the order—

8 (A) in the case of a proposed order to
9 which an individual responds under paragraph
10 (2)(B), not later than five business days after
11 receiving the response of the individual; or

12 (B) in the case of a proposed order to
13 which an individual does not respond, not later
14 than 15 business days after the Secretary pro-
15 vides notice to the individual under paragraph
16 (2)(A).

17 (b) APPEAL OF ORDER OF SECRETARY.—(1) Upon
18 the issuance of an order by the Secretary under subsection
19 (a) with respect to an individual, the individual shall have
20 an opportunity to appeal the order to the Director of the
21 Office of Personnel Management before the date that is
22 seven business days after the date of such issuance.

23 (2) The Director shall make a final decision with re-
24 spect to an appeal under paragraph (1) within 30 days
25 after receiving such appeal.

1 (c) **EFFECTIVE DATE.**—This section shall apply with
2 respect to an amount paid by the Secretary to or on behalf
3 of an employee of the Department for relocation expenses
4 on or after the date of the enactment of this Act.

5 (d) **CONSTRUCTION.**—Nothing in this Act or the
6 amendments made by this Act may be construed to modify
7 the certification issued by the Office of Personnel Manage-
8 ment and the Office of Management and Budget regarding
9 the performance appraisal system of the Senior Executive
10 Service of the Department.

11 **SEC. 12. IMPROVEMENT OF TRAINING FOR SUPERVISORS.**

12 (a) **IN GENERAL.**—The Secretary of Education shall
13 provide to each employee of the Department of Education
14 who is employed as a supervisor periodic training on the
15 following:

16 (1) The rights of whistleblowers and how to ad-
17 dress a report by an employee of a hostile work envi-
18 ronment, reprisal, or harassment.

19 (2) How to effectively motivate, manage, and
20 reward the employees who report to the supervisor.

21 (3) How to effectively manage employees who
22 are performing at an unacceptable level and access
23 assistance from the human resources office of the
24 Department and the Office of the General Counsel
25 of the Department with respect to those employees.

1 (b) DEFINITIONS.—In this section, the term “super-
2 visor” has the meaning given such term in section 7103(a)
3 of title 5, United States Code.

4 **SEC. 13. ASSESSMENT AND REPORT ON EFFECT ON SENIOR**
5 **EXECUTIVES AT DEPARTMENT OF EDU-**
6 **CATION.**

7 (a) IN GENERAL.—Not later than two years after the
8 date of the enactment of this Act, the Secretary of Edu-
9 cation, in consultation with the Office of Management,
10 shall—

11 (1) measure and assess the effect of the enact-
12 ment of this title on the morale, engagement, hiring,
13 promotion, retention, discipline, and productivity of
14 individuals in senior executive positions at the De-
15 partment; and

16 (2) submit to the Committee on Health, Edu-
17 cation, Labor, and Pensions of the Senate and the
18 Committee on Education and the Workforce of the
19 House of Representatives a report on the findings of
20 the Secretary with respect to the measurement and
21 assessment carried out under paragraph (1).

22 (b) ELEMENTS.—The assessment required by sub-
23 section (a)(1) shall include the following:

24 (1) With respect to engagement, trends in mo-
25 rale of individuals in senior executive positions at

1 the Department and individuals aspiring to senior
2 executive positions.

3 (2) With respect to promotions—

4 (A) whether the Department is experi-
5 encing an increase or decrease in the number of
6 employees participating in leadership develop-
7 ment and candidate development programs with
8 the intention of becoming candidates for senior
9 executive positions at the Department; and

10 (B) trends in applications to senior execu-
11 tive positions at the Department.

12 (3) With respect to retention—

13 (A) trends in retirement rates of individ-
14 uals in senior executive positions at the Depart-
15 ment;

16 (B) trends in quit rates of individuals in
17 senior executive positions at the Department;

18 (C) rates of transfer of—

19 (i) individuals from other Federal
20 agencies into senior executive positions at
21 the Department; and

22 (ii) individuals from senior executive
23 positions at the Department to other Fed-
24 eral agencies; and

1 (D) trends in total loss rates by job func-
2 tion.

3 (4) With respect to disciplinary processes—

4 (A) regarding individuals in senior execu-
5 tive positions at the Department who are the
6 subject of disciplinary action—

7 (i) the length of the disciplinary proc-
8 ess in days for such individuals both before
9 the date of the enactment of this Act and
10 under the provisions of this Act described
11 in subsection (a)(1); and

12 (ii) the extent to which appeals by
13 such individuals are upheld under such
14 provisions as compared to before the date
15 of the enactment of this Act;

16 (B) the components or offices of the De-
17 partment which experience the greatest number
18 of proposed adverse actions against individuals
19 in senior executive positions at the Department
20 and components and offices which experience
21 the least relative to the size of the components
22 or offices' total number of senior executive posi-
23 tions at the Department;

1 (C) the tenure of individuals in senior ex-
2 ecutive positions at the Department who are the
3 subject of disciplinary action;

4 (D) whether the individuals in senior exec-
5 utive positions at the Department who are the
6 subject of disciplinary action have previously
7 been disciplined; and

8 (E) the number of instances of disciplinary
9 action taken by the Secretary against individ-
10 uals in senior executive positions at the Depart-
11 ment as compared to governmentwide discipline
12 against individuals in Senior Executive Service
13 positions (as defined in section 3132(a) of title
14 5, United States Code) as a percentage of the
15 total number of individuals in senior executive
16 positions at the Department and Senior Execu-
17 tive Service positions (as so defined).

18 (5) With respect to hiring—

19 (A) the degree to which the skills of newly
20 hired individuals in senior executive positions at
21 the Department are appropriate with respect to
22 the needs of the Department;

23 (B) the types of senior executive positions
24 at the Department most commonly filled under

1 the authorities in the provisions described in
2 subsection (a)(1);

3 (C) the number of senior executive posi-
4 tions at the Department filled by hires outside
5 of the Department compared to hires from
6 within the Department;

7 (D) the length of time to fill a senior exec-
8 utive position at the Department and for a new
9 hire to begin working in a new senior executive
10 position;

11 (E) the mission-critical deficiencies filled
12 by newly hired individuals in senior executive
13 positions at the Department and the connection
14 between mission-critical deficiencies filled under
15 the provisions described in subsection (a) and
16 annual performance of the Department;

17 (F) the satisfaction of applicants for senior
18 executive positions at the Department with the
19 hiring process, including the clarity of job an-
20 nouncements, reasons for withdrawal of applica-
21 tions, communication regarding status of appli-
22 cations, and timeliness of hiring decision; and

23 (G) the satisfaction of newly hired individ-
24 uals in senior executive positions at the Depart-
25 ment with the hiring process and the process of

1 joining and becoming oriented with the Depart-
2 ment.

3 **SEC. 14. MEASUREMENT OF DEPARTMENT OF EDUCATION**
4 **DISCIPLINARY PROCESS OUTCOMES AND EF-**
5 **FECTIVENESS.**

6 (a) MEASURING AND COLLECTING.—

7 (1) IN GENERAL.—The Secretary of Education,
8 in consultation with the Office of Management, shall
9 measure and collect information on the outcomes of
10 disciplinary actions carried out by the Department
11 of Education during the three-year period ending on
12 the date of the enactment of this Act and the effec-
13 tiveness of such actions.

14 (2) ELEMENTS.—In measuring and collecting
15 pursuant to paragraph (1), the Secretary shall meas-
16 ure and collect information regarding the following:

17 (A) The average time from the initiation of
18 an adverse action against an employee at the
19 Department to the final resolution of that ac-
20 tion.

21 (B) The number of distinct steps and lev-
22 els of review within the Department involved in
23 the disciplinary process and the average length
24 of time required to complete these steps.

1 (C) The rate of use of alternate discipli-
2 nary procedures compared to traditional dis-
3 ciplinary procedures and the frequency with
4 which employees who are subject to alternative
5 disciplinary procedures commit additional of-
6 fenses.

7 (D) The number of appeals from adverse
8 actions filed against employees of the Depart-
9 ment, the number of appeals upheld, and the
10 reasons for which the appeals were upheld.

11 (E) The use of paid administrative leave
12 during the disciplinary process and the length
13 of such leave.

14 (b) REPORT.—

15 (1) IN GENERAL.—Not later than December 31,
16 2017, the Secretary shall submit to the appropriate
17 committees of Congress a report on the disciplinary
18 procedures and actions of the Department.

19 (2) CONTENTS.—The report submitted under
20 paragraph (1) shall include the following:

21 (A) The information collected under sub-
22 section (a).

23 (B) The findings of the Secretary with re-
24 spect to the measurement and collection carried
25 out under subsection (a).

1 (C) An analysis of the disciplinary proce-
2 dures and actions of the Department.

3 (D) Suggestions for improving the discipli-
4 nary procedures and actions of the Department.

5 (E) Such other matters as the Secretary
6 considers appropriate.

7 (3) APPROPRIATE COMMITTEES OF CON-
8 GRESS.—In this subsection, the term “appropriate
9 committees of Congress” means—

10 (A) the Committee on Appropriations and
11 the Committee on Health, Education, Labor,
12 and Pensions of the Senate; and

13 (B) the Committee on Appropriations and
14 the Committee on Education and the Workforce
15 of the House of Representatives.

○